

1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 JEANNE C. WERNER  
Deputy Attorney General, State Bar No. 93170  
3 Department of Justice  
2101 Webster Street, 12th Floor  
4 Oakland, California 94612-3042  
Telephone: (510) 286-3787  
5 Facsimile: (510) 286-4020

6 Attorneys for Complainant

7  
8 **BEFORE THE**  
**BOARD OF ACCOUNTANCY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation ) NO. AC-96-30  
Against: )  
12 ) STIPULATION FOR  
ALBERT J. DAY ) SURRENDER OF LICENSE  
13 P. O. Box 1428 )  
Burlingame, CA 94011 )  
14 )  
Certified Public Accountant )  
15 Certificate No. CPA 10091 )  
Respondent. )  
16 )  
17

18 IT IS HEREBY STIPULATED by and between Albert J. Day,  
19 the respondent in this proceeding and the Board of Accountancy,  
20 State of California, by and through its attorney, Jeanne C.  
21 Werner, Deputy Attorney General, that:

22 1. Albert J. Day ("Respondent") has received and read  
23 the Accusation which is presently on file and pending in Case No.  
24 AC-96-30 before the Board, a copy of which is attached hereto as  
25 Exhibit A and incorporated herein.

26 2. Respondent understands the nature of the charges  
27 alleged in the Accusation and that, if proven at hearing, such

1 charges and allegations would constitute cause for imposing  
2 discipline upon Respondent's Certified Public Accountant  
3 Certificate issued by the Board.

4           3. For the sole purpose of resolving this  
5 disciplinary matter, Respondent admits all of the charges and  
6 allegations in the Accusation, and each of them, and stipulates  
7 that, accordingly, cause for discipline exists against his  
8 license, as is set forth in the Accusation.

9           4. Respondent is fully informed regarding the  
10 provisions and effects of this stipulation, which Respondent has  
11 carefully read. Respondent is fully aware of his right to be  
12 represented by legal counsel in this matter, his right to a  
13 hearing on the charges contained in the Accusation, his right to  
14 confront and cross-examine witnesses against him, his right to  
15 reconsideration, appeal, and any and all other rights which may  
16 be accorded him under the California Administrative Procedure Act  
17 (Government Code section 11500 et seq.).

18           5. Respondent freely and voluntarily waives each and  
19 every one of the rights set forth above.

20           6. Respondent understands that in signing this  
21 stipulation rather than contesting the Accusation, he is agreeing  
22 that the Board may issue its order accepting the surrender of his  
23 license without further legal process.

24           7. It is acknowledged by the parties that this  
25 stipulation constitutes an offer in settlement to the Board and  
26 is not effective until adoption by the Board.

27           8. In the event this stipulation is not adopted by

1 the Board, nothing herein recited shall be construed as a waiver  
2 of Respondent's right to a hearing or as an admission of the  
3 truth of any of the matters charged in the Accusation.

4 9. Respondent hereby surrenders Certified Public  
5 Accountant Certificate No. CPA 10091 subject to the Board's  
6 formal acceptance of said surrender. Upon acceptance of the  
7 stipulation and surrender by the Board, Respondent agrees to  
8 surrender and cause to be delivered to the Board both his license  
9 and wallet certificate. Respondent further understands that when  
10 the Board accepts the surrender of his license, he will no longer  
11 be permitted to practice as a certified public accountant in  
12 California.

13 10. Respondent fully understands and agrees that, in  
14 acting upon any application for licensure, relicensure or  
15 reinstatement which Respondent ever files in the State of  
16 California, the licensing entity may consider all of the charges  
17 and allegations contained in Accusation No. AC-96-30 to be true  
18 and correct and admitted by Respondent. Further, Respondent  
19 stipulates that the Board's costs of investigation and  
20 prosecution in this case were certified to have been \$ 2,142.37  
21 and stipulates that, in acting upon any application for  
22 licensure, relicensure or reinstatement which Respondent ever  
23 files in the state of California, the Board may impose, as a

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1 condition of licensure, relicensure, or reinstatement, full  
2 payment of these costs.

3 DATED: July 7, 1997

4 DANIEL E. LUNGREN, Attorney General  
5 of the State of California

6 Jeanne C. Werner  
7 JEANNE C. WERNER  
8 Deputy Attorney General

9 Attorneys for Complainant

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11  
12 I, Albert J. Day, hereby certify that I have read this  
13 stipulation and agreement in its entirety, that I fully  
14 understand the legal significance and consequences thereof and  
15 agree to be bound thereby, and in witness thereof I affix my  
16 signature.

17 DATED: July 5, 1997

18 Albert J. Day  
19 ALBERT J. DAY

20 Respondent  
21 Replied to Werner 1/2/97

22 C:\JEANNE\DAYSTP.SUR  
23 (4/10/97)


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ORDER OF THE BOARD OF ACCOUNTANCY

The surrender of Certified Public Accountant  
Certificate No. CPA 10091, by Respondent, Albert J. Day, is  
accepted, on the terms set forth in the Stipulation For Surrender  
of License, by the Board of Accountancy of the State of  
California.

This decision shall become effective on the 28th day  
of August, 1997.

IT IS SO ORDERED this 29th day of July,  
1997.

  
\_\_\_\_\_  
ROBERT SHACKLETON  
For The Board of Accountancy

# **EXHIBIT A**

1 DANIEL E. LUNGREN, Attorney General  
of the State of California  
2 JEANNE COLLETTE WERNER  
Deputy Attorney General, State Bar No. 93170  
3 Department of Justice  
2101 Webster Street, 12th Floor  
4 Oakland, California 94612-3049  
Telephone: (510) 286-3787  
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Attorneys for Complainant  
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11 **STATE OF CALIFORNIA**

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12 ) ACCUSATION  
ALBERT J. DAY )  
13 P. O. Box 1428 )  
Burlingame, CA 94011 )  
14 )  
Certified Public Accountant )  
15 Certificate No. CPA 10091 )  
Respondent. )  
16 )  
17

18 Complainant Carol Sigmann, as cause for disciplinary  
19 action, alleges:

20 1. Complainant is the Executive Officer of the  
21 California Board of Accountancy ("Board") and makes and files  
22 this accusation solely in her official capacity.

23 LICENSE INFORMATION

24 2. On or about March 23, 1963, Certified Public  
25 Accountant Certificate No. CPA 10091 was issued by the Board to  
26 Albert J. Day ("respondent"). Said Certified Public Accountant  
27 Certificate is currently renewed, effective January 1995, in an

1 inactive status in the absence of the required continuing  
2 education.

3 STATUTES AND REGULATIONS

4 3. At all times material herein, section 5100 of the  
5 California Business and Professions Code (hereinafter the "Code")  
6 has provided that "(a)fter notice and hearing, the Board may  
7 revoke, suspend or refuse to renew any permit or certificate"  
8 issued by the Board, for unprofessional conduct which includes,  
9 but is not limited to, the conviction of any crime substantially  
10 related to the qualifications, functions, and duties of a  
11 Certified Public Accountant [Code section 5100(a)].

12 4. Under Board Rule 99<sup>1/</sup>, a crime or act is  
13 substantially related to the qualifications, functions, or duties  
14 of a CPA if, to a substantial degree, it evidences present or  
15 potential unfitness to perform the functions authorized by the  
16 licensee's certificate or permit in a manner consistent with the  
17 public health, safety, or welfare.

18 5. Code section 5107 provides, in part, that the  
19 Board may request the administrative law judge, as part of the  
20 proposed decision in a disciplinary proceeding, to direct any  
21 holder of a permit or certificate found in violation of Code  
22 section 5100(a) by reason of a felony conviction to pay to the  
23 Board all reasonable costs of investigation and prosecution of  
24 the case, including, but not limited to, attorney's fees.

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27 1. Codified at Title 16, California Code of Regulations,  
Section 99.

FOR CAUSE FOR DISCIPLINE

6. Respondent's certificate is subject to disciplinary action pursuant to Code section 5100(a) in that, in the United States District Court for the Eastern District of California, in R.R. No. 95-048-LKK, *United States of America v. Albert J. Day*, respondent pled guilty, pursuant to a plea agreement he signed on August 8, 1995, to one felony count of conspiring to commit offenses against the United States, in violation of 18 U.S.C. Sec. 371. On November 14, 1995, respondent was sentenced to three years' probation and directed to perform 200 hours of community service.

The circumstances are that respondent intentionally participated in the schemes conceived by co-conspirator Michael Booth to defraud four individuals of a sum of approximately \$140,000. Respondent was a beneficiary of the Day Family Trust and knew that the trust had no assets. Respondent did nothing to correct or contradict misstatements made by Booth to the effect that the trust had substantial assets. Respondent also made statements that bolstered and perpetuated Booth's misrepresentations.

7. Incorporating by reference the allegations in paragraph 6, respondent's certificate is subject to discipline in that the felony conviction is a crime substantially related to the qualifications, functions or duties of a CPA within the meaning of Board Rule 99.

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1 OTHER MATTERS

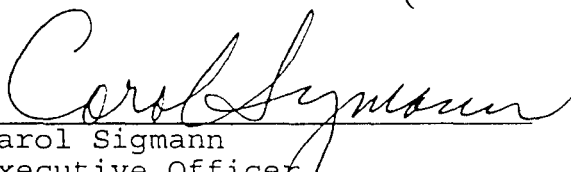
2 8. Pursuant to Code section 5107, it is requested  
3 that the administrative law judge, as part of the proposed  
4 decision in this proceeding, direct respondent to pay to the  
5 Board all reasonable costs of investigation and prosecution in  
6 this case, including, but not limited to, attorneys' fees.

7 PRAYER

8 WHEREFORE, complainant requests that the Board hold a  
9 hearing on the matters alleged herein, and that following said  
10 hearing, the Board issue a decision:

- 11 1. Revoking or suspending Certified Public Accountant  
12 Certificate Number CPA 10091, heretofore issued to  
13 respondent Albert J. Day;  
14 2. Awarding the Board costs as provided by statute;  
15 and  
16 3. Taking such other and further action as the Board  
17 deems proper.

18  
19 DATED: October 18, 1996

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21   
22 Carol Sigmann  
23 Executive Officer  
24 Board of Accountancy  
25 Department of Consumer Affairs  
26 State of California

27 Complainant

CAJEANNEIDAY.ACC  
(8/23/96)